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ORIGINAL VERSION FILED: MAY 30, 2007
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PUBLIC VERSION

BY E FILING

The Honorable Mary Pat Thyng
United States Magistrate Judge
United States District Court
for the District of Delaware
844 King Street
Wilmington, DE 19801

Re: *Honeywell, et al. v. Apple Computer, et al.*
C.A. No. 04-1338-*** (Consolidated)

Dear Magistrate Judge Thyng:

We write on behalf of Plaintiffs ("Honeywell"), respectfully requesting that the Court: (i) compel Defendants Wintek Corporation and Wintek Electro-Optics Corporation ("Wintek") to produce all sales information relating to modules with purported rotation of 0°, 90°, and > 30°; and (ii) compel Wintek to produce witness(es) for certain 30(b)(6) topics for continued deposition because Honeywell was unable to complete the deposition in January in Taipei. Furthermore, due to Wintek's failure to adequately prepare for the 30(b)(6) deposition, Honeywell respectfully requests that the Court order Wintek to produce these witnesses in the United States or bear the financial burden for the continuation of the deposition in Taiwan.

I. Wintek Should Produce Sales Information For All Accused Modules, Including Those It Claims Use 0°, 90°, Or > 30° of Rotation

As Your Honor is aware, to move this matter in a more efficient manner, Judge Jordan circumscribed discovery by requiring Honeywell to identify specifically accused modules and to seek discovery related to those accused products. The defendants, including Wintek, are then obligated to meet their discovery burdens and produce **all** materials relating to the modules accused by Honeywell. Unfortunately, Wintek refused to produce sales information for modules accused of infringement, based solely on its unilateral view that those modules fall outside the

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scope of the '371 patent. However, claim construction – including the range of equivalents – is for a later day, and there is no basis for avoiding legitimate discovery in the interim.

A. Modules with rotation of 0° or 90°

Wintek cannot in good faith withhold discovery under the claim that modules have no BEF film rotation.

Ex. 1 (Huang Depo. Vol. II, 114-115; 143:3-144:3.).

In fact, Honeywell has accused one such module of infringing the '371 patent because of its approximate 1° of rotation.

B. Modules with rotation of Greater Than 30°

Wintek likewise refuses to produce discovery for modules with greater than 30° of rotation. Wintek's only reason for refusing to provide discovery is that a module with more than 30° of rotation cannot be "slight" rotation. Wintek apparently construes "slight" not to include these modules, but when Honeywell asked Wintek to supplement its response to Honeywell's request for admission, Wintek refused on the grounds that to do so would be tantamount to requiring "construction of the claim terms." **Ex. 2** (E. Niemeyer March 4, 2007 Letter to A. McKenna). Yet, barely one month later, in response to another Honeywell request for supplemented admissions, Wintek engaged in its own extra-judicial claim construction by declaring that modules with greater than 30° of rotation were outside of Honeywell's patent specification. **Ex. 3** (E. Niemeyer April 19, 2007 Letter to A. McKenna). On the one hand, Wintek does not understand the claim terms sufficiently to answer Honeywell's Requests for Admission, but on the other hand it understands the terms well enough to support its refusal to produce sales information for accused modules.

Wintek cannot be allowed to thwart the discovery process in this way. Because all of these modules fall within the parameters of the accused modules and are relevant to Honeywell's claims, Wintek should be compelled to produce full discovery on these modules.

II. Wintek Must Be Compelled to Produce Certain 30(b)(6) Witnesses for Continued Depositions

Wintek's efforts to dodge discovery obligations have also permeated the deposition process. Despite the fact that: (i) its 30(b)(6) witnesses were unprepared; (ii) it failed to produce documents requested months in advance until the deposition commenced (and delivered a volume of licensing documents to counsel's hotel room *after* the deposition of its

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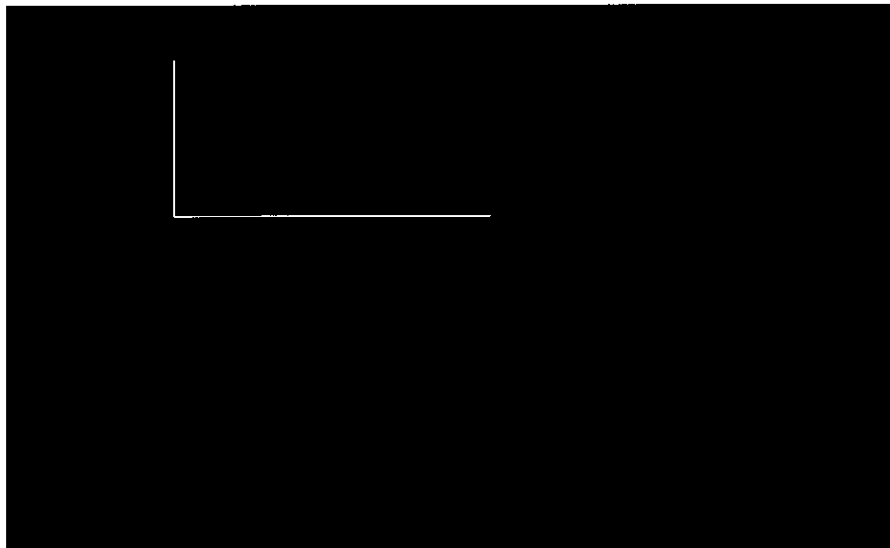
licensing designee); and (iii) Honeywell reserved its rights to continue these depositions, Wintek has arbitrarily refused to produce these witnesses for the necessary continued depositions.

In January 2007, Honeywell traveled to Taipei prepared to depose 30(b)(6) witnesses on properly noticed topics including technical aspects of Wintek's modules and sales information. However, Wintek's decision to produce unprepared witnesses as well as to engage in "document dumps" during and after testimony thwarted Honeywell's ability to complete the depositions.

Wintek designated Dr. Huang as its 30(b)(6) designee on technical aspects of the modules. Honeywell assumed that Wintek's designee would have a working knowledge as to how and why Wintek designates its modules with a numbering system. [REDACTED]

[REDACTED] Ex. 4 (Huang Depo., Vol. I, 68:2-69:3; 73:24-74:21; 77:16-78:9; 79:1-10). During the deposition, counsel for Honeywell questioned Dr. Huang regarding Wintek's decision to begin rotating BEF films, a topic upon which the technical designee should at least have some working knowledge. [REDACTED]

[REDACTED] Yet, Dr. Huang had not even **attempted** to contact these managers prior to the deposition, let alone actually inform himself as to a key topic in this matter.



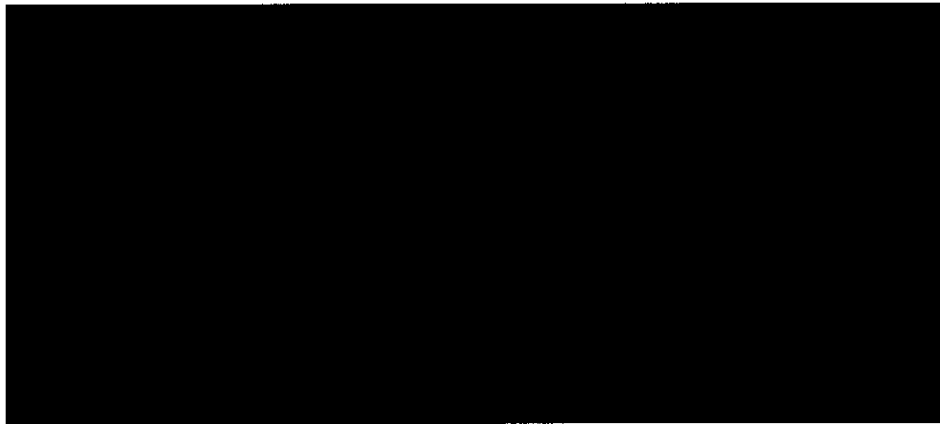
¹ Dr. Huang was unfamiliar with the unique numbering system used by Wintek on its technical drawings, and was unable to tell Honeywell whether a particular component drawing related to a particular accused module.

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Ex. 4 (Huang Depo., Vol. I, at 90:15-91:1, 102:8-23) (emphasis added).³

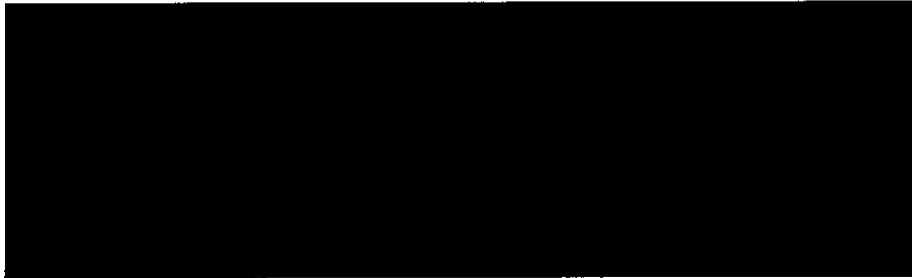
Unfortunately, Ms. Susie Lee, Wintek's 30(b)(6) designee on sales information, was Dr. Huang's equal in inadequate deposition preparation. Honeywell attempted to question Ms. Lee regarding license agreements, a properly noticed topic. When asked what she had done to locate such license agreements for the deposition, Ms. Lee testified:



³ The above was not an isolated incident with Dr. Huang. At the conclusion of his Friday afternoon session, Dr. Huang was asked to make an inquiry into who had made design change decisions.

(See Ex. 1 (Huang Depo., Vol. 2, at 164:8-17)).

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Ex. 5 (Lee Depo., Vol. I, 71:15-72:4).

Honeywell believes Wintek's failure to adequately prepare its corporate designees is clear evidence of Wintek's consistent flaunting of its discovery obligations.⁵ Honeywell respectfully requests that it be allowed to continue the depositions of Wintek's witnesses, and, furthermore, Honeywell requests that the Court order Wintek to bring these witnesses to the United States or pay Honeywell's costs if the depositions are to be continued in Taipei.

Respectfully,

/s/ Thomas C. Grimm

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TCG/dam

Attachments

cc: Dr. Peter T. Dalleo, Clerk (by hand – w/attachments)
See attached Certificate of Service

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⁴ At the end of the deposition day, counsel for Wintek attempted to rectify Ms. Lee's failure to look for the depositions, but did not address her failure to familiarize herself with them as Wintek's 30(b)(6) designee. *See* Ex. 5 (Lee Depo., Vol. I, at 118).

⁵ These discovery issues have been addressed in repeated correspondence between counsel. *See, e.g.,* Ex. 6 (A. McKenna May 14, 2007 Letter to E. Niemeyer).

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2007, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, which will send notification of such filing to the following: John R. Alison, Parker H. Bagley, Robert J. Benson, Robert Karl Beste, III, Elizabeth L. Brann, Christopher E. Chalsen, Hua Chen, Arthur G. Connolly, III, Frederick L. Cottrell, III, Francis DiGiovanni, Thomas M. Dunham, Kevin C. Ecker, Amy Elizabeth Evans, York M. Faulkner, Maria Granovsky, Christopher J. Gaspar, Alexander E. Gasser, Alan M. Grimaldi, Thomas C. Grimm, Thomas Lee Halkowski, Angie Hankins, Richard L. Horwitz, Dan C. Hu, John T. Johnson, Robert J. Katzenstein, Nelson M. Kee, Richard D. Kelly, Matthew W. King, Stephen S. Korniczky, Gary William Lipkin, Hamilton Loeb, Robert L. Maier, David J. Margules, David Ellis Moore, Carolyn E. Morris, Arthur I. Neustadt, Elizabeth A. Niemeyer, Andrew M. Ollis, Karen L. Pascale, Adam Wyatt Poff, Leslie A. Polizoti, John F. Presper, Alana A. Prills, Steven J. Rizzi, Lawrence Rosenthal, Avelyn M. Ross, Philip A. Rovner, Diana M. Sangelli, Robert C. Scheinfeld, Carl E. Schlier, Chad Michael Shandler, John W. Shaw, Matthew W. Siegal, Neil P. Sirota, Monte Terrell Squire, William J. Wade, Roderick B. Williams, Edward R. Yoches.

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